

**IN THE UNITED STATES BANKRUPTCY COURT**  
**FOR THE DISTRICT OF IDAHO**

<b>IN RE</b>	)	
	)	
<b>MARTINEZ, GERARDO CONTRERAS,</b>	)	<b>Case No. 99-02834</b>
<b>and MARTINEZ, MARICELA MURILLO,</b>	)	
	)	
	)	
<b>Debtors.</b>	)	<b>MEMORANDUM OF</b>
	)	<b>DECISION, AND ORDER</b>
	)	
_____	)	

HONORABLE TERRY L. MYERS, UNITED STATES BANKRUPTCY JUDGE

Marc S. Tanner, Boise, Idaho, for Debtors.

John H. Krommenhoek, Boise, Idaho, Chapter 13 Trustee.

**BACKGROUND**

The proposed chapter 13 plan of the above Debtors came on for its scheduled confirmation hearing on January 6, 2000. The Debtors' counsel, Mr. Tanner ("Counsel") and the Trustee appeared. All issues related to confirmation had been resolved. The Court, however, raised a concern over the reasonableness of fees charged in this uncontested and uncomplicated chapter 13 case.

Counsel for the Debtors was ordered to submit an affidavit or statement in support of his fees charged. As of this date, 3 weeks later, Counsel has yet to comply.

There is no apparent reason why an explanation of services rendered would be so difficult or take so long to produce. Additionally, the delay of Counsel in completing the record impacts his clients, who await confirmation of their plan, and also the creditors who are to be paid, (albeit in a small amount<sup>1</sup>) under the plan.

For these reasons, the Court concludes that it is appropriate to address the issue of reasonable compensation upon the existing record and in the absence of Counsel's response.

## **DISCUSSION**

The Court is empowered to review the reasonableness of fees charged a debtor. § 329(b); Rule 2017(a). In this case, Counsel charged \$995.00, with \$335.00 being paid prior to filing. The plan contemplates \$660.00 to be paid Counsel by the Trustee over the first ten months of the plan.

The decision to charge \$995.00 is likely made, at least in part, to avoid the need to file a fee affidavit. The Court has adopted a practice that generally does not require proof of the reasonableness of fees in a chapter 13 case if in the aggregate they are less than \$1,000.00. *In re Gebert*, 99.4 I.B.C.R. 137, 138 (Bankr. D. Idaho 1999). But as discussed in *Gebert*, there is nothing in this unwritten rule of practice that insulates fees from review in appropriate cases even if they are below the \$1,000 threshold. *See*, 99.4 I.B.C.R. at 138. The burden always rests on Counsel to justify the fees charged and show they are reasonable. *Id.*; *Hale v. United States Trustee (In re Basham)*, 208 B.R. 926, 931-32 (9<sup>th</sup> Cir. BAP 1997).

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<sup>1</sup> The plan contemplates payments of \$75.00 per month for 36 months.

The Court's comments at the confirmation hearing were solely to the effect that the bare record in this case (as in 3 others, out of some 60 heard that day) didn't alone support the reasonableness of the fee. Occasionally, chapter 13 cases are so straightforward that the Court needs the debtor's attorney to explain what the Court's file alone fails to disclose – why a fee more often seen in the “typical” chapter 13 case<sup>2</sup> is nevertheless appropriate. The Court invited Counsel to fill in the gaps, and he does not serve his own interests well by failing to do so.<sup>3</sup>

The record in this case indicates that the Debtors' financial situation presents no unique or difficult issue. They have no priority debt, and no real estate debt. They specially classify no unsecured debt in their plan, nor have unique or problematic unsecured claims scheduled. They deal with but one secured creditor, holding a claim collateralized by a vehicle, and propose to deal with that creditor by simply paying it “outside the plan” according to their prebankruptcy agreement. The plan used here is the model plan in this District, and was easily generated.<sup>4</sup> If there is something about this case that explains why a fee of \$995.00 is appropriate, it cannot be discerned from the record.

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<sup>2</sup> The more typical chapter 13 case, which supports the \$1,000 rule of thumb, “deal[s] with claims secured by real estate, cure of default on mortgages, priority tax claims, multiple secured claims regarding personal property, leases, and several other matters which arise with regularity under chapter 13.” *Gebert*, 99.4 I.B.C.R. at 138.

<sup>3</sup> The debtor's counsel in one of the other January 6 cases questioned by the Court adequately justified the fees sought, where his resolution of certain tax issues and, in particular, dealing with a creditor's stay violation required no pleadings and were thus not apparent from the Court's file. In another, the attorney provided an itemization of time spent and services rendered, which substantiated the charge asserted. The plans in both cases were confirmed without modification of the requested fees.

<sup>4</sup> *See, Gebert*, 99.4 I.B.C.R. at 137, n.1.

Submissions by Counsel in other matters before the Court would support a conclusion that his fees are generally charged at a rate of \$85.00 per hour for work of the kind called for here. Such a rate is reasonable. But that rate would require between 11 and 12 hours of work performed on this matter, and the bare file simply does not support a conclusion that services were or will be required in this magnitude.

The Court concludes that the burden of sustaining a \$995.00 fee has not been met. It appears that more was charged to the Debtors than was reasonable and appropriate in this case. The Court will reduce the fee, pursuant to the authority of § 329(b) and Rule 2017, by the amount of \$400.00, leaving a total fee in this matter of \$595.00.<sup>5</sup> Of that amount, \$335.00 has already been paid, leaving \$260.00 to be funded under the plan. The plan will be confirmed, as amended by this decision.

## **ORDER**

Based upon the foregoing and the record in this case, the reasonable compensation of the Debtors' Counsel in this case is set at \$595.00, and the plan is amended, by virtue hereof, to provide for payment to Counsel of \$260.00. The Order submitted and endorsed by the Trustee shall be entered, as here modified. Dated this 27th day of January, 2000.

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<sup>5</sup> This would be the equivalent of 7 hours of attorney time at a rate of \$85.00 per hour. Seven hours might still be generous, given the record before the Court.